

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-123

JEFFERY S. ROEHM,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLANT

Opinion Delivered AUGUST 27, 2008

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT,
[NO. CR-06-224-1]

HONORABLE SAM POPE, JUDGE,
AFFIRMED

KAREN R. BAKER, Judge

A jury convicted appellant Jeffrey Scott Roehm of two counts of battery in the first degree, arising from child abuse against his four-month-old twin sons, and sentenced him to two consecutive terms of 240 months in the Arkansas Department of Correction. On appeal, appellant claims that the trial court erred by denying his motions for a directed verdict asserting two points of error: (1) that the State failed to present substantial evidence that he was the individual who harmed the victims; and (2) that the State failed to prove that one of the victims, his son David, suffered “serious physical injury.” We find no error and affirm.

Appellant, his wife, and their twin sons lived with his wife’s parents. While his wife’s sister maintained a room in the home as well, she was rarely there. From the time the two boys were approximately one month old, appellant was their sole and primary caretaker while his wife worked a full-time job. Appellant admitted that he at times experienced aggravation with the infants and his responsibility regarding their care. Evidence established that appellant called his wife at work expressing frustration with the infants and requesting she leave work to return home to assume their

care. Appellant's mother-in-law confirmed appellant's irritation and testified that appellant complained regarding his responsibilities for providing for the children's daily care. Prior to the events leading to the charges, the mother of the victims questioned appellant about bruises on the babies. Her inquiries resulted in appellant's acknowledgment that he was perhaps too rough in their care. After the events leading to the charges, appellant provided contradictory statements to law enforcement officers who were investigating the children's injuries by first denying ever dropping either infant and then later asserting that he had in fact dropped Joshua causing him to hit his head on the floor. Medical evidence established that neither a caregiver nor a medical provider would be able to ascertain the extent of the children's internal injuries from visual observation of the children.

The events immediately precipitating the filing of the charges against appellant occurred over a period of less than a week. On Monday, December 11, 2006, Joshua began vomiting uncontrollably. On Friday, December 15, appellant took him to the doctor who, unaware of any physical trauma, suggested a change in baby formula. Two days later, while in the sole care of appellant, Joshua stopped breathing. A pediatrician specializing in child abuse began treating Joshua and determined that, in addition to conditions consistent with shaken baby syndrome, the child also had nine rib fractures that were at least two weeks old, a fracture through the tibia in his lower left leg, and corner fractures to the end portions of the bones in his upper and lower leg. The corner fractures were estimated to be between one and four weeks old and were consistent with trauma caused by an individual pulling on the child's leg forcefully and/or shaking the child violently, causing the leg to "flap" back and forth. The doctor described the injuries to Joshua as life-threatening and characterized them as inflicted as the result of child abuse.

Because Joshua's injuries were consistent with child abuse, his twin brother, David, was

brought in for examination the following day. It was determined that David suffered from fractures to his left and right tibia, several rib fractures, bleeding within his brain, and bruises to the leg, shoulder, chest, and face. His injuries were also characterized as resulting from child abuse, consistent with violent shaking, and between one and four weeks old.

An appeal from a denial of a motion for directed verdict is a challenge to the sufficiency of the evidence. *Flowers v. State*, 373 Ark. 119, --- S.W.3d ---- (2008). When reviewing a challenge to the sufficiency of the evidence, this court determines whether the verdict was supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence that is forceful enough to compel a conclusion one way or the other beyond speculation or conjecture. *Id.* The reviewing court views the evidence in the light most favorable to the verdict and considers only evidence that supports the verdict. *Id.*

Circumstantial evidence may constitute substantial evidence to support a conviction. *Id.* The longstanding rule in the use of circumstantial evidence is that, to be substantial, the evidence must exclude every other reasonable hypothesis than that of the guilt of the accused. *Id.* The question of whether the circumstantial evidence excludes every other reasonable hypothesis consistent with innocence is for the jury to decide. *Id.* Upon review, this court must determine whether the jury resorted to speculation and conjecture in reaching its verdict. *Id.* The credibility of witnesses is an issue for the jury and not the court. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006). The trier of fact is free to believe all or part of any witness's testimony and may resolve questions of conflicting testimony and inconsistent evidence. *Id.*

Appellant's charges of battery arose from the statutory provision that addresses intentional injuries inflicted upon young children. This subsection provides that "[a] person commits first-

degree battery if he intentionally or knowingly, without legal justification, causes serious physical injury to one he knows to be twelve years of age or younger.” Ark. Code Ann. § 5-13-201(a)(6) (Supp. 2007). “Serious physical injury” means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. Ark. Code Ann. § 5-1-101(21) (Supp. 2007). Whether a victim has sustained serious physical injury, as well as the question of temporary or protracted impairment, are issues for the jury to decide. *E.g.*, *Bangs v. State*, 338 Ark 515, 998 S.W.2d 738 (1999). In determining whether a physical injury exists, a jury may consider the severity of the attack and may rely on its common knowledge, experiences, and observations in life to make this determination. *Linn v. State*, 84 Ark. App. 141, 133 S.W.3d 407 (2003).

A criminal defendant’s intent is seldom proved by direct evidence and must normally be proved from the circumstances of the crime, and a jury is allowed to draw upon its common sense to infer intent from the circumstances. *DeShazer v. State*, 94 Ark. App. 363, 230 S.W.3d 285 (2006). Because of the difficulty in ascertaining a defendant's intent or state of mind, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Id.*

Substantial evidence supports appellant’s convictions. Appellant was the primary caregiver for the victims, complained to third parties regarding his caregiving responsibilities, and provided contradictory statements to law enforcement officers who were investigating the children’s injuries by first denying ever dropping either infant and then later asserting that he had in fact dropped Joshua causing him to hit his head on the floor. Appellant’s credibility was entirely within the jury’s province, and no basis exists to disturb their finding that appellant was the individual who caused the injuries to his twin sons.

Neither does any basis exist under these facts and circumstances to disturb the jury's conclusion that the injuries suffered by David at the hands of his father constituted serious physical injury. The medical testimony established that the child, David, suffered from fractures to his left and right tibia, several rib fractures, bleeding within his brain, and bruises to the leg, shoulder, chest, and face. His injuries were also characterized as resulting from child abuse, consistent with violent shaking, and between one and four weeks old. It was the jury's duty to determine whether these injuries to the young victim, at an age still too young to walk, constituted a serious physical injury. While, appellant argues that the medical testimony indicated that these injuries were not expected "to interfere with David's life in later years, with his living, with his function forever," his argument ignores the severity of the attack and the common knowledge, experiences, and observations in life that the jury considered in making its determination. *See Linn, supra.*

Accordingly, we find no error and affirm.

HART and HEFFLEY, JJ., agree.